



TRANSLATING LABOUR POLICIES INTO PRACTICES ON CONSTRUCTION SITES

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INDEVELOPMENT**

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1 INTRODUCTION

Every industry has to comply with the law

Like any industry, the construction industry has to operate in compliance with existing labour laws, acts and other related legal documents. Many construction works are carried out by or under direct supervision of government officials. It is therefore unfortunate that in many low and middle-income countries the construction industry does not comply with these laws, acts, directives and other legal documents.

Labour act not always clear or accommodating

In most of these countries, the construction industry complains that the labour act itself is not clear and unambiguous or does not facilitate common practices in the industry.

Gap between reality and law

In short, there is often a gap between the act and reality.

Options to close the gap

To close the gap between the act and reality, the government can take several measures. The first measure is to *clarify the scope of the labour act*. This activity involves clarifying, supplementing and stating as precisely as possible the scope of the law and the employment relationships. The act preferably would contain provisions about definitions of the different employment relationships and the criteria, tests and legal constructs to recognise it. Furthermore the labour acts would include all possible employment relations. In many countries there are different acts for different employers. In other countries the acts only cover certain employees and often the self-employed are not covered. Another way of reducing the gap between reality and the labour acts are *compliance and enforcement*.

Objective of paper

This document intends to provide background information about the construction industry in low and middle-income countries and the reasons why it often does not comply with the labour laws. Furthermore, it provides some guidelines to governments, trade unions and contractor associations for improving the situation on construction sites.

2 CONSTRUCTION INDUSTRY, THE ACTORS AND ACTS

Construction industry differs from most other industries

The construction industry is in some ways different from many other industries. First of all it are often the clients who take the initiative to procure certain constructions. Many constructions are designed for a specific client. Secondly the government or semi-government institutions are large consumers of constructions and infrastructure. Thirdly the client may construct the goods/assets themselves or may contract activities out to a third party, usually the private sector. Fourthly almost all constructions are unique and special projects were formed to design and construct them.

The clients

The nature of the clients is in particular of interest. More than in any other industry it is felt that these clients have to be social responsible. After all the government procures many of the constructions and the government has their own engineering units, which design and construct the goods and assets. And the government of course has to set the right example. In addition the construction industry is known for its high number of accidents.

Clients involvement differs

However it should be noted that not only governments procure constructions. There are also clients who only once in a live time do so, e.g. a family that has engaged a contractor to build their house. All related acts should take into account the different nature of the clients.

Furthermore, the involvement of the clients in the actual design and construction process varies also considerably. Clients may be at the same time be the producer of the works and do everything themselves, like people who build their own house. Another example is the so-called self-help project, where a group of people receives funding or other assistance to create a particular construction or infrastructure. The people working on the project are not working for any employer, but are working for their own benefit. The labour act is usually not applicable to these constructions. There are also clients who build the construction themselves but with assistance of their employees. The client has a number of workers and under its management the workers produce the construction. The client is the direct employer of the workers. The workers may be permanently employed, employed for a fixed duration or employed for a specific task. The labour act is clearly applicable in these situations. However when the client is the government, other laws may prevail. In some countries, however these temporary workers of the government are not covered under any law. In the third situation, nowadays the most common one, the client engages specialised companies to design, construct the goods and assets. These companies, contractors and consultants, usually have employees to carry out the necessary tasks. During construction, the client often engages another body (e.g. a consultant) to supervise the performance of the contractors. Clients who procure many construction works, e.g. the government

and real estate agents, usually have their own engineering staff, which designs the constructions. Most governments contract the actual construction activities out to the private sector. The government staffs only supervise the performance of the contractors. The labour act is usually applicable to the relationship between the owner of the company and their employees/workers. However in some countries, like in the Philippines the clients are liable for the actions of their contractors. This system is perhaps unfair to clients who only occasionally engage contractors. These clients are often not commercial producers but merely consumers who want to procure a construction for private purposes. It is very unlikely that these clients have the expertise and knowledge to correctly guide and supervise the performance of the contractors. They usually rely on the goodwill and qualifications of their contractor or supervising consultants. Clients who on the other hand are often involved in construction activities like the government and real estate agents have indeed the knowledge and capacity to control the contractors. Joint liability may provide incentives to the client to enforce compliance of the labour act upon their contractors.

Community contractors

In many low and middle-income countries, governments may contract communities to carry out construction works. Sometimes the communities are just treated as temporary employees of the government, or the community is treated like any other contractor, but more common the community is considered a self-help group. In most cases the community contractors are financially awarded, although the amount and mode of payment varies considerably.

There are different views if construction and maintenance works for a community can be considered self-help. Some may argue against it, because not every community member has selected the project or will benefit from its fruits. School-buildings only serve the families with children. Furthermore some communities may have a high turn over of people moving in and out the neighbourhood. Those who argue in favour, state that it can be seen as form of tax payment and when properly organised and not too demanding it could be accepted. Others will argue that such a tax is only acceptable if the community concerned benefits directly from the project and the project meet the specific needs of the community. However the fact that a community has an interest in the created assets does not automatically imply that any individual from the community has to contribute, given that all people have their own personal interests.

Legal documents for construction industry

In most countries the government developed legal documents that formalise the correct rules of conduct in the construction industry. Often these rules are binding for public works and only give guidance to private construction activities. Examples of such documents are public work directives, building codes and standard contract documents and standard specifications. These documents may refer to labour acts or even give more specific details about correct application of the labour laws in the construction industry. It may describe the precise roles, responsibilities, liabilities and authorities with regard to the correct application. It is not really necessary to

Need for coordination between acts	<p>replicate the labour law in these documents. Although many contractors and subcontractors are not familiar with the labour act, the contract documents could require the contractor to maintain a copy of the labour acts on site.</p> <p>The labour act and all these other related documents preferably would accommodate common situations in the construction industry. It should be clear to all parties when the different acts apply and when not. It is important that all the acts together accommodate all common practices and that they do not contradict. In other words it is necessary to coordinate the contents of the different acts.</p>
Subcontractors and Labour subcontractors	<p>Contractors and to a lesser extend community contractors often contract a part of the works out to subcontractors. In many low and middle-income countries so-called labour subcontractors employ a large portion of the workers. They may just supply the workers and taking commission for these services or operate as real subcontractors, often assigned to the more labour-intensive works. However the principal contractor usually supplies its labour subcontractors with all the necessary equipment and it may also provide the management to the workers. The latter case is more common if the labour subcontractor only operates as a temporary employment agency.</p>
Triangular employment relationship	<p>When a (labour) subcontractor employs the labourers there is a triangular employment relationship. The labourer employed by subcontractor (the providing company) performs work for the main contractor (the user company). The main contractor directly or indirectly manages the performance of the workers and even may be responsible for the protection of the workers against accidents. Without clear agreements between all parties, this relationship may result in a lack of protection for the workers. In many low and middle-income countries the contractor and their subcontractors only have verbal agreements. Both assuming that the other party will take care for certain protective measures for the workers.</p>
Triangular employment relationship in the legal documents	<p>Although triangular employment relationships are very common in most countries, still many labour acts do not accommodate them. However in the construction industry acts, codes, e.g. public works directives or standard contract agreements, is commonly stated that the contractor may subcontracts part of the works, but that none of the subcontract releases the contractor for its formal and overall responsibilities to the workers on site, technical quality of the work, environment and other considerations. The contractor is either fully or jointly liable if the subcontractor defaults. This requires that the contractor should have the right to inspect and review the records of the subcontractor, in particular so when non-compliance is suspected.</p>
Informal economy	<p>Many of the labour contractors are members of the so-called informal sector. The owners of these companies never registered their companies nor do they pay taxes. Registration is still cumbersome in many countries and many smaller companies do not see the benefits</p>

Benefits of the informal economy

or registering and paying taxes. The expenditures for registration fees and taxes are higher than the bribes they have to pay to operate in an informal economy. Furthermore many small companies are not able to provide the bond, as specified in the different laws. In addition, within the informal economy they have to subscribe to all laws, increasing the cost of its operations.

Increasing cost makes any company less attractive to their clients. Furthermore many unregistered companies do not see any benefits for registering their company. Although registering would allow them to bid for works themselves, but the risks of not being awarded any contract is often perceived to be too high. This risk perception is strongly influenced by the bid award system that may favour existing and experienced companies.

New companies usually win contracts by bidding with lower prices, compensating for their lack of experience. However many clients in low and middle-income countries had bad experiences with new companies and therefore look for options for quality control. They may fix the contract price and select the most qualified bidder. Or they select the most qualified bidder, which price does not exceed the client's budget. Smaller companies are more successful in winning contracts, when bids are first technically screened and subsequently financially ranked. Screening of the technical proposal means that the proposal is either accepted or rejected. Only the bids of which the technical proposal is accepted the financial proposal will be evaluated. Financial proposals that are unrealistic or exceeding the upper limit of the budget are rejected. Usually the lowest acceptable financial proposal is selected.

Most small companies prefer to be associated with larger companies, which give them a higher guarantee of regular jobs and therefore turnover. Due to the fact that most labour subcontractors are unregistered companies and due to mutual convenience of both parties, the labour subcontractor and their principal contractor often only sign verbal agreements with a handshake. Most of these verbal agreements do not include specific clauses with regard to protection of the workers, health and safety standards and other particulars.

Workers

The workers in the construction industry have different characteristics, on basis of their skill, origin, sex and other economic activities.

Skills

Roughly it is possible to classify the workers of any industry in four groups according to the skills:

1. Unskilled
2. Semi-skilled
3. Skilled
4. Management

The construction industry is characterised by its high numbers of unskilled workers.

Unskilled workers & other economic activities	<p>Many of the unskilled workers in the construction industry in low and middle-income countries are also active in the agricultural sector. Some of them have their own farms; others may work as labourers for farmers during the labour-intensive harvest and sowing seasons.</p>
Entering employment in the construction industry	<p>The required level to enter the construction industry varies from unskilled to skilled, from informal to formal economy and from country to country. Employers that are part of the informal economy recruit their unskilled workers often on relationships with existing workers. Skilled workers more and more need the correct educational and professional background, even in the informal economy. Contractors mostly employ the skilled labour force and tend to recruit their workers on basis of their qualifications. Regardless the employer, new entrances are first taken on board as apprentices and attached to experienced artisans. Thus they start as unskilled workers and learn the profession on the job. When the portfolio of the employer expands, they may be asked to take up similar jobs themselves. However in many countries only male workers are able to develop their career this way. It should equally be noted that the construction industry is highly male dominated. For example, in Kenya and the Philippines only men are working in this industry. In other countries the female contribution of the workers is seldom higher than 20%. Some countries, like Nepal, try to stimulate contractors and community contractors to employ a larger female workforce.</p> <p>Public notices are still very rare in the industry. In South Africa only 21% of the jobs were advertised at gates or in newspapers or other forms of media. This figure is very high in comparison with many other low and middle-income countries in Africa and Asia. In particular in countries where many construction workers are illiterate, such form of recruiting is inappropriate.</p>
Technical training institutes	<p>In more and more countries technical training institutes provide training to artisans and technicians. Certificates of these training institutes are often considered as an entry ticket for a position in the formal economy.</p> <p>Many of these artisans and site foremen (in Thailand, Nepal and the Philippines) aspire to start their own (unregistered) company.</p>
Mobility among workers	<p>The mobility among the workers to switch employers is in general not very high. Many workers depend on their relationship with their employer for future jobs and income. However in particular when the worker is not employed permanently, the worker may develop similar relationships with several employers.</p>
Migration	<p>Migration of men and women in search for employment in the construction industry is extensive. Seasonal migration is predominant. Lack of work during the slack agricultural season, low wage rates and lack of other income opportunities force large numbers of workers to migrate towards the urban centres and towards the infrastructure projects in the rural areas. Many employers in the construction industry prefer to work with their own workforce that migrates from</p>

project to project. For the employer it is the best method to control the quality of the works. The employer knows these workers and the long-term relationship motivates the workers to perform well. The workers from the direct vicinity of the project are often less attractive to the employers. There is not an existing relationship between the employer and the workers. In addition, due to all kind of events like marriages and funerals, local workers are reported to be more absent in comparison to the migrating workforce.

Self-employed and daily workers

A large portion of the workforce in the construction industry is employed as a daily or self-employed worker. This means that they do not have a written or verbal contract. In practicable terms it also means that the employers assume that the workers will pay taxes and insure themselves against accident.

Self-employed, daily workers and additional benefits

Any industry needs some kind of flexible work force. This flexible workforce may be needed for simple and unskilled jobs, but also for specialised inputs from skilled workers. The construction industry is no exception. It relies heavily on large temporary workforce of unskilled workers. However many of these so-called daily workers are employed for long durations by their employers and should be given a contract for a fixed duration or for the delivery of a particular product or service. In the more economic advanced countries the daily workers are often obtained from specialised agencies. These so-called employment agencies make it their business to provide daily workers to the different industries. Although the workers are not full time employed they do receive all kinds of benefits, like paid leave, pension, health insurance etc. In low and middle-income countries labour subcontractors operate similar, to employment agencies, with the exceptions that they often operate as subcontractors and do not provide their workers with addition benefits. Besides daily workers, the industry also uses self-employed workers. They often do the same work as the daily workers, but their status is different. The self-employed operate as a freelance contractor. When skilled, the self-employed have its own little workshop, when unskilled the self-employed worker tends to sell his/her services at pick up points. The more advanced economies also work with self-employed construction workers, e.g. plumbers who are engaged to fix a leakage in a house. The client pays the freelance contractor a fee for his/her services or delivery of a product. The freelance contractor is expected to pay for all the costs, including insurances and taxes. Therefore the freelance contractor usually charges a fee that is higher than the wage level. However in many low and middle-income countries the self-employed workers do not receive higher fees for their services than the workers with fixed duration or permanent employment contracts. Even if they do receive higher wages, it is questionable if the difference does compensate the additional costs for taxes, tools, protective gear, insurance, etc. In addition it should be noted that wage levels are still low and that (health) insurance schemes of any kind are often very inaccessible for these self-employed workers.

Many of the daily workers are engaged for the whole duration or a large part of the project. They may actually work for the same employer for years. Thus many workers are treated as self-employed workers, meaning the workers may be laid off any time, the employer does not insure the workers or pay any of the benefits to which permanent employees are entitled to.

The labour acts often do not define when a worker is to be considered self-employed or has to be employed. Perhaps in practical terms workers at pick-up centres could be considered to be self-employed. Workers that are recruited by and associated with their (labour sub) contractor should not be considered to be self-employed but daily workers. The employers of the daily workers have a moral obligation to provide the additional benefits and pay the taxes. Labour-subcontractors should either operate as a subcontractor or operate as a temporary employment agency in its dealing with workers.

2.1 THE COST OF LABOUR PROVISIONS

Capacity to bear the costs

Employers and clients often complain that the labour act only increases the costs of the construction. It therefore may have a negative impact on the economic situation of the industry as a whole. The International Labour Organisation argues that improved labour conditions result in increased productivity. The real costs or benefits of improved labour conditions are often unknown. Prior to improving the working conditions governments need to analyse whether the clients of the construction industry are able to bear these additional costs, if any. A big client of the construction industry is the government itself, which procures buildings for education, administration, health and other services, or procures infrastructure to transport goods, water, sewerage, electricity etc.

Government objectives

Ideally the government would like to provide these services to all their citizens and not only to the rich. This means that it has to keep the cost of construction and maintenance of their assets as low as possible. Governments therefore balance their interests. It wants to construct and maintain its assets to provide services to its citizens without exploiting the people who do the actual work. Governments would therefore do well by analysing the financial situation of different sectors. The road transport sector in Thailand generates a surplus where the same sector in Nepal has cash deficits. Thus the road sector in Thailand can afford to pay more for improvements of working conditions, where the road sector in Nepal can only do so with additional financial subsidies.

3 ENFORCEMENT AND THE CONSTRUCTION INDUSTRY

Capacity of the labour inspectorate

In most low and middle-income countries the number of labour inspectors and their geographical location is far from adequate to inspect all the construction sites. Most of their labour inspectorates have adopted policies to focus only on certain industries and the construction industry is not one of them. However if complaints are filed the labour inspectorate will take action even in the non-priority industries.

Civil engineers and labour protection

In the Netherlands, civil engineers are trained in analysing the labour acts and building codes and translating these into their designs and construction methods. Contractors are expected to make risk assessments of construction sites and propose mitigating measures to reduce the risk of accidents. Supervisors on construction sites have the obligation to assess the occupational safety and health hazards and instruct the contractor to take mitigating measures if necessary.

In most countries, government's engineering units will supervise the technical quality and progress of the public works. Supervisors on construction sites usually have ample time to carry out additional activities. Although it will require additional training, most supervisors have the time to provide a helping hand in monitoring the compliance of some crucial clauses of the labour act, like health and safety, wage payments and insurance provisions. When the public works are implemented under administration the government is the direct employer of the workers and therefore its engineering units shall have to comply with the labour or related acts.

Private works

Not always a qualified technician is appointed to supervise the construction works for the private sector. Friends, relatives and the client itself may supervise the construction of private properties.

Not all constructions of private properties are contracted out. It is also possible that the client employs the workers directly. Thus expansion of the roles of the technical supervisors is not always an option on private owned construction sites. Local governments however can assist the labour inspectors with their task of monitoring the labour conditions.

Informal monitoring

On some donor projects, e.g. food for work projects in Nepal, you will find notice boards erected on site. These notice boards provide information about the work rules, wages and benefits. It may also contain information about addresses where workers can file complaints if they feel that their employer mistreats them.

Public meetings and role of the client

On these projects, the workers, their employer (community contractor) and the client (government representatives and donor representatives) meet to discuss issues of common interest. It is also a forum where workers can file a complaint when they feel that they are mistreated (not paid on time or not paid enough). This system has

some successes. However it should be noted that the presence and influence of the client is very important. The client had to act as a guarantee to the workers, who are afraid for repercussions from the employer. Not all clients, of the private sector, may be willing or able to carry out this task.

Filing complaints

Many labour acts have clauses about filing of complaints against their employer. These clauses are often based on practices in high-income countries where workers have legal protection against repercussions from their employers. However in many low and middle-income countries the legal system is less solid and most workers are very hesitant to file a complaint against their employer unless it can be done anonymously.

Enabling environment for supervision

Monitoring and supervision activities always require the proper attitude and organisation culture and incentives. Without these, supervision of any kind will be of inferior quality, affecting the compliance.

4 COMPLIANCE OF THE CONSTRUCTION INDUSTRY

This chapter runs through a number of issues that are usually addressed in labour acts, often formulated in separate clauses. It also gives a description of common practices in the construction industry in low and middle-income countries. These descriptions are based on studies in Nepal, Thailand and the Philippines and literature review of studies in Kenya and South Africa.

4.1 GENDER EQUALITY

Women's participation in the construction industry remains low.

Many governments want to promote the equal position of women and men in society. However it has been recognised that if special efforts are not taken, women's participation in infrastructure works remains low. The construction industry is highly and sometimes solely male dominated (Kenya and the Philippines). In other countries female participation is solely restricted to unskilled jobs or jobs that are perceived to be unskilled (Nepal and Thailand). In many countries female workers receive less pay for the same value of work than their male colleagues.

Positive steps towards attaining better gender mix

Some countries (Nepal) have taken positive steps towards attaining gender mix on construction sites. It requires community contractors to employ a minimum percentage of female construction workers on site. However due to cultural barriers this is not always acceptable to all communities. In the Philippines the construction industry itself has taken some steps to attract women to take up specific construction activities, like welding. The construction industry needed qualified welders and was not satisfied about the performance of the male workers. At the same time female workers who had gained working experiences in the construction industry in other countries returned back to the Philippines and were willing to continue their profession in their own country. The female workers operate in urban areas, where it is easier to hide in anonymity.

Equal pay

As stated earlier female workers are often paid less for the same value of work than their male colleagues. Governments may take some special steps to overcome this deficit. First of all it can demand that all employers erect special notice boards with all relevant information to their workers, including wage rates and contact address for complaints. However notice boards will not be very useful to illiterate workers, unless the text is presented verbally to them. Supervisors of public works may take up this task. Secondly they can strictly monitor the wage payments while evaluating the requests for instalments.

Female workers are often denied skill development opportunities

Another issue on the agenda of the female workers is that they are often excluded from skill development opportunities. The government's engineer departments can set up special programs to upgrade the skills of female construction workers. These programs

should not only provide training to female workers but also guarantees job opportunities, e.g. a special contract clause could specify the number/percentage of female skilled construction workers that should be employed during construction. This program needs to run at least a decade, if it would become successful. Upgrading the skills of female construction workers is merely a cultural issue rather than a technical issue. Changing any culture requires time.

4.2 PAYMENT ISSUES

Wage setting	Most countries have developed a system of minimum wages for different levels of skills and knowledge. When such a system is not available, the cost of ordinary labour could be estimated on the assumption that in rural areas, the workers would otherwise earn the minimum agricultural revenues and workers in the urban settlements would work in low wage level industries.
Net and gross wages	The minimum wages may vary in different parts of the country. The wage levels for the self-employed, fixed term employed and permanent employed ideally would differ in height. The self-employed are assumed to pay their taxes and insurances. Like the fixed term employees they also are expected to be underemployed during parts of the year. In other words the self-employed should receive the gross wage, where the other employees should receive the net wage. In all cases the wage levels should respect the minimum wage levels.
Remuneration	The wage system also influences the wage level. Basically there are three systems: <ol style="list-style-type: none"> 1. Time based 2. Piece work 3. Task work
Time based	Time based remuneration systems have the major advantage that bookkeeping is easy. However productivity may fluctuate considerably and supervision of the workers is continuously required to maintain high productivity.
Piecework	With piecework and task work the payment is related to productivity of the workers. The main difference is that under the piecework system the output per labourer/gang can fluctuate, whereby the payment and output is always the same in the task work system. Task work has two main advantages over piecework: <ol style="list-style-type: none"> 1. It is easier to control the progress of the works 2. It is more suitable to women.
Limitations to productivity based remuneration	Piecework and task work are productivity-based remuneration systems. Such remuneration can only be used when the productivity of each individual can be measured and they are able to influence the productivity autonomously. When the productivity is determined by equipment, productivity-based remuneration cannot be used.
Factors affecting production rates	Productivity will be influenced by regular job rotation, varieties in the to be shaped, used or tilled materials. Furthermore, required precision degree and the risk of exogenous effects resulting in unworkable situations influence productivity.
Non-working days	Because during unworkable situations (heavy rain, typhoon, etc) these workers cannot produce and therefore not earn, the risk is

Protection of wages	<p>considerable that they actually earn less than the minimum wage. Note that many daily workers in low and middle-income countries are also not paid when the work is stopped due to rain or any other reason. Governments may consider setting separate minimum wage levels for the construction industry to mitigate this habit. Of course contractors have always the option to allocate the workforce to other activities that are not influenced by the weather conditions (which are in general indoors).</p>
Instalments to contractor	<p>Regardless the remuneration system, it is very important that labourers are paid on time. When labourers are not paid on time, they are very likely to be forced to look for jobs elsewhere or organise strikes. After all, the labourers belong to the poorest segment of the society. This will hamper the construction's progress. The delays may result in additional costs as the overheads and facilities are still to be continued regardless the productivity. The quality may go down as well because workers and supervisors lose their motivation.</p>
Record keeping	<p>Sometimes problems with wage payment can be traced to their employers not being paid by their contracting agencies. In particular smaller companies will have difficulties to pay their workers, when they are not paid themselves.</p>
	<p>Whatever the basis, form or level of wages, useful and correct records must be kept to pay the wages on time and properly. Workers should be paid as close both in time and in location to the work for which they are being paid. Governments would preferable develop a standard with regard to payment records, for easy verification from their site.</p>

4.3 MIGRANT LABOURERS

Labour camps for migrating workers

If migrant labourers are employed, the project will have to make provisions for the transportation and housing of the labourers. The International Labour Organisation provides some generic guidelines about the design and location of these camps.

They should be located on high and well draining land. It should be located at least 200 metres from the site and within a range of 3 km. Use as general guideline 5m² per person. It should be near a source of good water. It should be easily accessible to project vehicles. Certainly when these vehicles are stored during the night in the camp or when they have to collect the workers. Off course the camps should have sufficient pit latrines of at least three meters deep and located at least 25 meters away from the camp. The camp will also require sufficient energy for cooking and lightning.

Female workers in Nepal were very concerned about separate sanitation and bathing facilities. The water supply and sanitation conditions in the camps were also reported to influence the number of sick days due to diarrhoea.

HIV/AIDS

Often there seems to be an increased risk of HIV/AIDS when migrant labourers are employed. It may not be within the scope of the project to educate all in the project area. However some simple and cheap interventions can help to reduce the risk of HIV/AIDS.

- Make condoms available where they are needed
- Provide awareness signals about the risks of unsafe sex and proper use of condoms where sexual action takes place
- Inform sex workers, about behaviour of the new clients
- Arrange sessions about the subject in schools and other public domains

4.4 WORKING HOURS & LEAVE

Working hours clause often neglected

Most labour acts include clauses on working hours, overtime and leave arrangements. In both Nepal and the Philippines almost all construction workers in the rural areas work 7 days a week and sometimes twelve hours a day, clearly not respecting the labour act. In Thailand the situation is a little better, but still about 20% of the construction workers were reported to work 7 days per week.

Preference of workers

Because construction workers are often paid on basis of productivity or on a daily basis and their salaries are low, many prefer to work seven days per week and long hours. There have been reports about Thai construction workers taking amphetamines to work double shifts.

Monitoring

It is easy to monitor the working days when construction is stopped during rest days and periods. However in many countries, construction activities continue, even 24 hours per day. In such situations the supervisors could check the administration with regard to proper allocation of working time.

Paid Leave

Paid leave is very uncommon in the construction industry. Only permanent employed workers are able to take paid leave. Temporary employment agencies in the high-income countries usually include leave compensation in the daily wage for temporary workers.

4.5 CHILD LABOUR

Child labour is not very common on construction sites in Asia. Child labour is reported to be more common in the supplying industries, like stone quarries and brick kilns.

4.6 OCCUPATIONAL SAFETY AND HEALTH

The construction industry's reputation

The construction industry is characterised for its high incidence of accidents. Although it is difficult to include specific safety and health clauses in the labour act, it is not uncommon to include specific clauses in public works directives, contract documents, specifications and building codes.

Roles and responsibility

Due to the triangular relationship it is important to formalise the responsibilities with regard to occupational safety and health. Who provides the protective gear; who ensures that the provided tools and equipment are in good condition; who ensures that the site is safe? Who provides the workers with clean drinking water and proper sanitation facilities?

Client versus contractor	<p>In most countries the principal employer, but not the client is made responsible and liable for the occupation health and safety situation. Thus the contractor is responsible for the actions of its subcontractors. And in most countries the client can instruct the contractor to improve the occupation health and safety conditions.</p>
Specific health and safety clauses	<p>The building code and standard contract documents and specifications may contain specific requirements with regard to occupation health and safety. In Thailand and the Philippines, contractors are required to prepare health and safety risk assessments and propose mitigating measures to the client.</p>
Defaulting the health and safety regulations	<p>However it has been recognised that many of the health and safety standards are not followed. Many contractors try to reduce the costs of their operations and win contracts through savings on safety and health provisions. The bill of quantities often does not contain a specific cost item for occupation health and safety measures. It is assumed that these costs are already included in the work items. Clients have difficulties checking if the costs for health provisions are correctly estimated. In theory this should not be necessary, because the client can always instruct the contractor to take mitigating measures and if the law or contract documentation provide details concerning health and safety provisions the contractor and the subcontractors are obliged to follow them. In some countries like the Philippines there is a specific cost item for health and safety measures in the bill of quantities. However if the client accepts bids that do not include any costs on this work item, the contractors feel motivated to default on these provisions.</p>
Example from Thailand	<p>In Thailand the contractors have to assess the health and safety risks and propose mitigating measures. This health and safety program forces the contractors to take the matter more seriously. They are obliged to employ a health and safety officer, who assesses the situation, but also provide information to the workers. Improved health and safety conditions often will result in higher productivity of the workers. However there is not yet enough data to make productivity assessments on basis of health and safety conditions on construction sites.</p> <p>When accidents occur, the contractor is seldom held accountable, either financially or in person. Insurance schemes, at least in theory, pay compensation to the workers or their families. Contractors with a high incidence of accidents do not have to pay higher insurance fees than well performing contractors. No claim policies are not common for this purpose and perhaps correctly so. Employers may decide not to report accidents in order to obtain or sustain a no claim situation.</p> <p>It is also seldom that a court case is filed against the contractor when an accident occurred due to neglect of the employer.</p>

4.7 INSURANCE

The acts

In most countries the employers have to insure their employees or workers. Some countries have special acts with regard social security provisions, e.g. the Philippines and Thailand. However it is not always clear if daily workers are included in this provision. In Thailand employees who work occasionally or seasonally are not covered under their Social Security Act. Ideally the act, precisely describes the responsibilities of the employer and the minimum coverage of the schemes. In addition not all companies have to insure their workers. Often small companies are exempted. In Nepal contractors have to provide in joint names (client and themselves) insurances. Officially the contractor has to submit a copy of the insurance scheme prior commencement of the works to their client. If the contractor fails to insure the workers the client may insure the workers on his behalf and deduct the costs from the contractors fee.

The bill of quantities may have a special cost item for insurance or it may be assumed that the costs are included in the work items. Because insurance costs are direct expenditures, it is recommendable to include this cost item in the bill of quantities. The contractor ideally would submit evidence of the insurance with his request for instalments.

Covering fluctuating workforce

One of the problems of the construction industry is its fluctuating workforce. One day 40 unskilled workers are on site; the next day only 20 unskilled workers. It is therefore more difficult to have individual insurance policies for the workers. Many contractors in low and middle-income countries therefore only provide insurance to the fixed term and permanent employees and expect the daily workers to cover their own insurance. However many insurance companies sell policies accommodating this specific phenomena. Furthermore contractors can reduce the fluctuation of the workforce by balancing the work inputs.

Many workers not insured

Despite all the legal documents and procedures, still many construction workers in low and middle-income countries are not insured and depend completely on the goodwill of their employer with regard to compensation for medical expenditures and other costs related to accidents.

Self employed workers

In high-income countries the self-employed workers are assumed to insure themselves. However in low and middle-income countries, it is often difficult and expensive for this category of workers to insure themselves. Furthermore their wages are usually low and they often prefer to take the cash home to paying insurance companies. If countries want to provide insurance to these workers, it rather obliges contractors and other employers to include these workers in their insurance policies.

4.8 JOB SECURITY

Job security major concern of workers

Job security is one of the most important concerns of the construction workers in low and middle-income countries. Some labour acts require that employers provide their workers with employment contracts or appointment letters. In other countries verbal agreements are enough.

Value and use of appointment letters

Regardless the official rules and regulations, the majority of the construction workers never see or sign appointment letters. They rely on verbal information about the duration of their job. This is partly acceptable to the workers because they usually rely on their employer for other jobs in the future. Most construction workers also accept short notice periods. Usually contractors do not prepare detailed resource plans or make any effort to balance the resources during construction and are therefore not able to give adequate information about the duration of employment. Many employers do not realise that resource plans are usually optimistic. They therefore do not have to be not afraid that they need to lay off workers earlier than expected. Resource plans also help contractors to optimise the efficiency on site.

4.9 SEVERENCE PAYMENTS

Most labour acts contain clauses about (temporary) discontinuation of employment relationships for a while due to slack seasons or any other reason. These clauses are very relevant in the construction industry, where the labour demand continuously seem to fluctuate. Many construction workers work for certain duration are subsequently laid of and later employed by the same employer. According to some labour laws, the employer is required to provide severance payments to the workers. However this is seldom practiced in the construction industry in low and middle-income countries.